

**VIA CERTIFIED MAIL -  
RETURN RECEIPT REQUESTED**

David C. Keith  
Anchor QEA, LLC  
614 Magnolia Avenue  
Ocean Springs, MS 39564

RE: Noncompliance with Administrative Settlement Agreement and Order on Consent for Removal Action, CERCLA Docket No. 06-12-10  
Time Critical Removal Action Work Plan Schedule  
San Jacinto River Waste Pits Superfund Site near Pasadena, Harris County, Texas

Dear Mr. Keith:

The Environmental Protection Agency (EPA) is hereby notifying you as Respondents' Project Coordinator that McGinnes Industrial Maintenance Corporation and International Paper Company (hereinafter referred to as Respondents) are in violation of the Administrative Settlement Agreement and Order on Consent for the Time Critical Removal Action (AOC), CERCLA Docket No. 06-12-10 and are subject to stipulated penalties. Receipt by Respondents' Project Coordinator of notice from the EPA relating to the AOC constitutes receipt by all Respondents under Paragraph 41 of the AOC.

Paragraph 45(c) of the AOC states that Respondents shall implement the Work Plan as approved in writing and in accordance with the schedule approved by the EPA. Once approved the Work Plan and the schedule are incorporated into and become fully enforceable under this Settlement Agreement. The Work Plan was approved with modifications on November 8, 2010. The Work Plan called for building an armor cap over both the eastern waste pit submerged in the San Jacinto River and the land based western pit. The original Work Schedule is included in the AOC, the Statement of Work which was signed on May 11, 2010. The EPA approved in writing the amended Work Schedule on December 15, 2010.

According to the amended Work Schedule, Respondents are required to complete the following activities by a specified date in accordance with the AOC:

- Delivery completion of Natural Stone on April 12, 2011. The actual completion date of delivery of natural stone occurred on July 12, 2011, 91 days late.
- Delivery completion of Processed Concrete on March 8, 2011. The actual completion date of delivery of processed concrete occurred on July 11, 2011.

- Delivery completion of filter fabric on February 1, 2011. The actual completion date of delivery of filter fabric occurred on February 8, 2011, 7 days late.
- Delivery completion of Linear Low-Density Polyethylene (LLDPE) on January 5, 2011. The actual completion date of delivery of LLDPE occurred on February 8, 2011, 34 days late.
- Completion of preparation and submittal of Project Work Plan on December 10, 2010. The actual completion date of preparation and submittal of Project Work Plan occurred on February 4, 2011, 56 days late.
- Completion of preparation and submittal of Site Specific Health and Safety Plan (HASP) on December 10, 2010. The actual completion date of preparation and submittal of Project Work Plan occurred on February 2, 2011, 54 days late.
- Completion of preparation and submittal of Quality Assurance Project Plan (QAPP) on December 10, 2010. The actual completion date of preparation and submittal of Project Work Plan occurred on February 4, 2011, 56 days late.
- Completion of Project Set-Up Laydown area Property Improvements on December 27, 2010. The actual completion date of Project Set-Up Laydown area Property Improvements occurred on February 1, 2011, 36 days late.
- Completion of Clearing & Grubbing for Access Road Construction on January 18, 2011. The actual completion date of Clearing & Grubbing for Access Road Construction occurred on February 10, 2011, 23 days late.
- Completion of Placement of Filter Fabric & Road Base for Access Road Construction on January 20, 2011. The actual completion date for the Placement of Filter Fabric & Road Base for Access Road Construction occurred on February 22, 2011, 33 days late.
- Completion of Environmental Protection Activities such as water and air quality monitoring on February 1, 2011. The actual completion date occurred on February 22, 2011, 21 days late.
- Completion of Water Side Placement Armor Cap C2 (renamed Armor Cap C in March 3, 2011 revised Removal Work Plan) on January 24, 2011. The actual completion of Water Side Placement Armor Cap C2 (renamed Armor Cap C in March 3, 2011 revised Removal Work Plan) occurred on May 13, 2011, 109 days late.
- Completion of Water Side Placement Armor Cap B (renamed Armor Cap B/C in March 3, 2011 revised Removal Work Plan) on February 8, 2011. The actual completion of Water Side Placement Armor Cap B (renamed Armor Cap B/C in March 3, 2011 revised Removal Work Plan) occurred on April 8, 2011, 59 days late.
- Completion of Water Side Placement Armor Cap E (renamed Armor Cap D(24) in March 3, 2011 revised Removal Work Plan) on April 5, 2011. The actual completion of Water Side Placement Armor Cap E (renamed Armor Cap D(24) in March 3, 2011 revised Removal Work Plan) occurred on May 19, 2011, 44 days late.
- Completion of Land Side Placement Clear & Grub Peninsula for Western Cell Preparation on February 8, 2011. The actual completion date of Land Side Placement Clear & Grub Peninsula for Western Cell Preparation occurred on April 12, 2011, 63 days late.

- Completion of Land Side Placement Shaping & Grading for Western Cell Preparation on February 9, 2011. The actual completion date of Land Side Placement Clear & Grub Peninsula for Western Cell Preparation occurred on May 19, 2011, 99 days late.
- Completion of Land Side Placement of Granular Fill (bedding) for Western Cell Preparation on February 10, 2011. The actual completion date of Land Side Placement of Granular Fill (bedding) for Western Cell Preparation occurred on May 24, 2011, 103 days late.
- Completion of Land Side Placement of LLDPE for Western Cell Preparation on February 23, 2011. The actual completion date of Land Side Placement of LLDPE for Western Cell Preparation occurred on June 1, 2011, 98 days late.
- Completion of Land Side Placement Armor Cap B (renamed Armor Cap B/C in March 3, 2011, revised Removal Work Plan) on March 22, 2011. The actual completion of Land Side Placement Armor Cap B (renamed Armor Cap B/C in March 3, 2011, revised Removal Work Plan) occurred on June 29, 2011.
- Completion of Land Side Placement Armor Cap C1 (renamed Armor Cap C in March 3, 2011, revised Removal Work Plan) on April 6, 2011. The actual completion of Land Side Placement Armor Cap C1 (renamed Armor Cap C in March 3, 2011 revised Removal Work Plan) occurred on June 29, 2011.
- Completion of Land Side Placement Armor Cap C2 (renamed Armor Cap C in March 3, 2011, revised Removal Work Plan) on May 18, 2011. The actual completion of Land Side Placement Armor Cap C2 (renamed Armor Cap C in March 3, 2011 revised Removal Work Plan) occurred on June 29, 2011.
- Completion of Land Side Placement Armor Cap A on May 23, 2011. The actual completion of Land Side Placement Armor Cap A occurred on July 7, 2011.

According to Paragraph 75 of the AOC, Respondents shall be liable to the EPA for stipulated penalties for failure to comply with the requirements of the AOC unless excused under Section XVII (Force Majeure). Furthermore, Paragraph 75 defines compliance by Respondents to include completion of the activities under this AOC or any Work Plan or other plan approved under this AOC within the specified time schedules established by and approved under this AOC. Because Respondents did not complete the above listed Work items within the approved time frames as stated in the December 15, 2010, the EPA approved Work Schedule, nor did the EPA excuse the delayed performance under Section XVII (Force Majeure), Respondents are liable to the EPA for stipulated penalties.

According to Paragraph 76 of the AOC, stipulated penalties for nonperformance of Work shall accrue per violation per day for noncompliance. For the above listed items, \$1,000 penalty per violation per day is occurring for the first through fourteenth day of noncompliance. Stipulated penalties increase to \$2,500 per violation per day for the 15<sup>th</sup> through 30<sup>th</sup> day of noncompliance, and penalties further increase to \$5,000 per violation per day for the 31<sup>st</sup> day and beyond of noncompliance. Per paragraph 79, all penalties shall begin to accrue on the day after the complete performance is due and shall continue to accrue through the final day of the completion of the activity. Enclosed is a chart outlining the stipulated penalties that Respondents have incurred, will continue to incur, and potentially incur for work tasks that are not completed on or before the promised due dates.

The EPA encourages Respondents to increase their efforts in order to meet the deadlines for completion of the removal work activities under the AOC. If you have any questions concerning this matter, please contact me at 214-665-2283.

Sincerely yours,

Valmichael Leos  
Remedial Project Manager

Enclosure

SANCHEZ	FAULTRY	WERNER	JOHNSON	HERNANDEZ/FOSTER
6SF-RA	6SF-R	6SF-TE	6SF-TE	6RC-S

PEYCKE	STENGER
6RC-S	6SF-T